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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 740

[160519443-6999-02]

RIN 0694-AG97

Temporary Exports to Mexico under License Exception TMP

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule aligns the time limit of License Exception Temporary Imports, Exports, Reexports, and Transfers (in-country) (TMP), which authorizes, among other things, certain temporary exports to Mexico, with the time limit of Mexico's Decree for the Promotion of Manufacturing, Maquiladora and Export Services (IMMEX) program. Currently, TMP allows for the temporary export and reexport of various items subject to the Export Administration Regulations (EAR), as long as the items are returned no later than one year after export, reexport, or transfer if not consumed or destroyed during the period of authorized use. Other than a four-year period for certain personal protective equipment, the one-year limit extends to all items shipped under license exception TMP. However, the one-year period does not align with the time constraints of Mexico's IMMEX program, which allows imports of items for manufacturing operations on a time limit that may exceed 18 months. This rule amends TMP to complement the timeline of the IMMEX program. Under this amendment, items temporarily exported or reexported under license exception TMP and imported under the provisions of the IMMEX

program would be authorized to remain in Mexico for up to four years from the date of export or reexport.

DATES: Effective: [INSERT DATE THIRTY DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Regulatory Policy

Division, Office of Exporter Services, Bureau of Industry and Security, by telephone (202) 482-2440 or e-mail: RPD2@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Overview

Mexico's Decree for the Promotion of Manufacturing, Maquiladora and Export Services, known as IMMEX, is a platform used by U.S. and foreign manufacturers to lower production costs by temporarily importing production materials into Mexico. Created in 2006, IMMEX is the product of the merger of two previous Mexican economic policies: the Maquiladora program, which was designed to attract foreign investment by exempting temporary imports from taxes, and the Temporary Import Program to Promote Exports (PITEX), which incentivized Mexican companies to grow and compete in foreign markets by providing temporary import benefits. Under IMMEX, companies located in Mexico are not subject to quotas and do not have to pay taxes on items temporarily imported and manufactured, transformed, or repaired before reexport.

Under IMMEX, the length of time that imports may remain in Mexico is commodity dependent, with some items allowed to remain in-country for 18 months or more. These time allotments are greater than the time limits for License Exception Temporary Imports, Exports, Reexports, and Transfers (in-country) (TMP) allowed under § 740.9(a)(14) of the EAR. With

few exceptions, items exported under TMP, if not consumed or destroyed during the authorized use abroad, must be returned to the United States one year after the date of export. The discrepancy between the time periods of IMMEX and TMP reduces the efficacy of both policies, thereby hindering the shipment of items subject to the EAR to and from Mexico.

U.S. companies that produce items subject to the EAR and ship those items to Mexico under IMMEX have notified the Bureau of Industry and Security of this discrepancy and have requested that BIS amend the EAR to increase compatibility with IMMEX. Considering the strength of Mexico's export control regime, as exemplified by its accession as a member to the Wassenaar Arrangement, the Australia Group, and the Nuclear Suppliers Group, BIS published the proposed rule 81 FR 57505 on August 23, 2016 (known hereafter as the August 23 rule) proposing to amend § 740.9(a) to account for IMMEX's time limit. For the purpose of simplicity, BIS did not propose to match the various time periods instituted by IMMEX. Instead, the rule proposed to revise § 740.9(a)(8) to allow temporary exports and reexports to remain in Mexico for up to four years, which accommodates the maximum available time that temporarily imported items may remain in Mexico under IMMEX and is in parallel with the validity period of BIS's licenses. Additionally, the August 23 rule proposed to revise introductory paragraph § 740.9(a)(14) to include a reference to § 740.9(a)(8) as an exception to the one-year time limit of TMP. BIS received only one comment regarding the rule, in which the user expressed support for the potential change in the regulations. Because BIS received only one comment, which was positive, regarding the August 23 rule, this final rule implements the proposed rule without change.

Export Administration Act

Although the Export Administration Act of 1979, as amended, expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 C.F.R., 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 4, 2016, 81 FR 52585 (August 4, 2016), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for the purposes of Executive Order 12866.
2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not contain any collections of information.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration at the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities.

Number of Small Entities

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

Economic Impact

BIS believes that this final rule will not have a significant economic impact because exporters are already using other provisions of the EAR to participate in IMMEX. Currently, exporters participating in IMMEX are using TMP for exports of a one-year duration. If the item is to

remain in Mexico longer than one year, exporters are required to either use another license exception or apply for a license that will address a specific time limit. This final rule merely extends the eligibility period for TMP to four years to complement the lengthy IMMEX time limit which could be 18 months or more, depending on circumstances. Extending the time limit of TMP to four years provides exporters flexibility in complying with the EAR and allows them to take fuller advantage of the privileges granted by IMMEX. While such a provision should reduce the paperwork burden to exporters, BIS does not believe increasing the time limit will lead to a significant increase in exports to Mexico. Rather, this final rule is consistent with the principle of the EAR in easing the unnecessary regulatory burden to exporters.

List of Subjects in 15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, 15 CFR part 740 of the EAR (15 CFR parts 730-774) is amended as follows:

PART 740 – [AMENDED]

1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4601 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 7201 et seq.; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

2. Section 740.9 is amended by revising paragraph (a)(8) and the introductory text of paragraph (a)(14) to read as follows:

§740.9 Temporary imports, exports, reexports, and transfers (in-country) (TMP).

* * * *

(a) * *

(8) *Assembly in Mexico.* Commodities may be exported to Mexico under Customs entries that require return to the United States after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico's in-bond industrialization program (IMMEX) under this paragraph (a)(8), provided that all resulting end-products (or the commodities themselves) are returned to the United States as soon as practicable but no later than four years after the date of export or reexport.

* * * *

(14) *Return or disposal of items.* With the exception of items described in paragraphs (a)(8) and (11) of this section, all items exported, reexported, or transferred (in-country) under this section must, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned to the United States or other country from which the items were so transferred as soon as practicable but no later than one year after the date of export, reexport, or transfer (in-country). Items not returned shall be disposed of or retained in one of the following ways:

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Kevin J. Wolf

Assistant Secretary for Export Administration

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